TDS provisions for payment to nonresident under Section 195 of the Income-tax Act

Seminar on Tax Planning of NRI
ICAI, Mumbai

CA Shailendra S. Sharma
9 January 2016
Concept of withholding tax (WHT) provisions for nonresident

An overview of WHT under Section 195

Operational rules

Case study

Key takeaways

Questions
Overview of TDS provisions - Chapter XVII, Collection & Recovery of Tax – Deduction at source

Provisions of WHT

Part A - General
  - Advance collection of tax by WHT
  - Direct payment by the taxpayer

Part B - Forms of WHT / TDS
  - Section 192 to 196D
  - Procedures of TDS Section 197 to 206AA

Part BB – Collection at Source
  - Section 206C to 206CA

Part C – Advance Payment of Tax
  - Section 207 to 219

Part D – Collection and recovery
  - Section 220 to 232

Part F & G – Interest / fee chargeable in certain cases
  - Section 234A to 234E

Section 195 read with all aspects involved for practice and procedures
Concept of WHT provisions for nonresident

- Compliance procedures
- Determination and analysis
- Applicability of the provisions

Code by itself
An overview of WHT under Section 195

- Scope of WHT
- Trigger point for Section 195
- Character of payment
- Quantifying WHT
- Alternate remedy for payer
- Alternate remedy for payee
- Compliance default
Section 195

Scope of WHT
Scope of WHT (1/2)

Operative provision of Section 195 of the Income-tax Act, 1961 (IT Act)

“Other sums.

195. [(1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest [(not being interest referred to in section 194LB or section 194LC)] [or section 194LD] or any other sum chargeable under the provisions of this Act (not being income chargeable under the head “Salaries”) shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force…”

Other clauses of Section 195

<table>
<thead>
<tr>
<th>Clauses</th>
<th>Other provisions applicable for Section 195 of IT Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>195(2)</td>
<td>Application by “Payer” to Tax Authorities (AO) to determine appropriate proportion of income chargeable to tax</td>
</tr>
<tr>
<td>195(3)</td>
<td>Application by “Payee” to AO for NIL WHT certificate</td>
</tr>
<tr>
<td>195(4)</td>
<td>Validity of certificate issued by AO</td>
</tr>
<tr>
<td>195(5)</td>
<td>Powers of CBDT to issue Notifications</td>
</tr>
<tr>
<td>195(6)</td>
<td>Furnishing of information relating to payments</td>
</tr>
<tr>
<td>195(7)</td>
<td>Authority of board to specify class of person or cases to make application under Section 195(2)</td>
</tr>
<tr>
<td>195A</td>
<td>Income payable “net of tax” Grossing-up</td>
</tr>
</tbody>
</table>
Scope of WHT (2/2)

Responsibility of WHT

Payers covered

• “Any person” covered irrespective of their status - Includes person under Section 2(31) responsible for paying (including individuals and HUF)

• Payer itself in case of company, and the company includes principle officer

• It also includes all nonresidents having taxable presence in India or not – Explanation 2 to Section 195; Circular No. 726 dated 18 October 1995

Payees covered

• Agent of a nonresident in India?

• Resident but not ordinary resident RNOR?

• Payment made to a foreign branch of an Indian Company?

Virtually includes EVERYONE
Section 195

Trigger point for Section 195
Trigger point for Section 195 (1/3)

**Applicability of Section 195**

- Sum chargeable to tax
  - All payments covered (exclusions specified), no threshold limit prescribed
  - “Any other sum chargeable” – Composite provision:
    - Extends to whole of India
    - Charge of income-tax
    - Scope of Total Income:
      - Received or deemed to be received in India
      - Accrue or arises or deemed to accrue or arise in India
      - Residence in India
  - Amount paid, that wholly bears character of income or Gross amount, the whole of which may or may not represent income or profits
  - Section 195 would not apply if sums paid to nonresident is tax exempt in India

- Timing of WHT
  - Tax to be withheld at the time of payment / credit whichever is earlier
  - Tax to be withheld even where no remittance is made, adjustment of dues
  - WHT in cases where RBI approval is required
  - If no income accrues to nonresident although accounting entry incorporating liability is passed, no WHT
  - Payee must be ascertainable
  - Time of deduction, from payers point of view and sum chargeable to tax in India from payee point of view
Trigger point for Section 195 (2/3)

**Sum chargeable to tax..brief insight**

- Where, payment made by resident to non-resident, was an amount not chargeable to tax in India, no tax is deductible at source

- Assessee liable to deduct TDS under Section 195 on payment made to non-resident even though payment is not made in cash but made in kind

- Payer obligated to WHT, even if the receipt is not taxable in the hands of the payee in the country of residence

- Sums not liable to tax in India on satisfaction of conditions, the principles are enunciated under *Circular 23/1969 and 786/2000* (now withdrawn) like (P to P, nonresident operates outside India, contract signed outside India, title of goods passed outside India, payment is directly remitted abroad, etc.):
  - Payments to:
    - Agency commission payable to foreign agents;
    - Off-shore supply of goods and equipments; and
    - Consideration paid for outright purchase of designs and drawings is not royalty

- No significant impact of withdrawal of the Circulars

- Does amount paid as penalty to the regulators chargeable to tax under Section 195?
# Trigger point for Section 195 (3/3)

## Specific exclusions for WHT

<table>
<thead>
<tr>
<th>Sections</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>115-O</td>
<td>Tax on distributed profits of domestic companies</td>
</tr>
<tr>
<td>192</td>
<td>Income from Salaries</td>
</tr>
<tr>
<td>194LB</td>
<td>Income by way of interest from infrastructure debt fund</td>
</tr>
<tr>
<td>194LC</td>
<td>Income by way of interest from Indian company</td>
</tr>
<tr>
<td>194LD</td>
<td>Income by way of interest on certain bonds and Government securities</td>
</tr>
</tbody>
</table>

## Other specific sections

<table>
<thead>
<tr>
<th>Sections</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>196B</td>
<td>Income from units</td>
</tr>
<tr>
<td>196C</td>
<td>Income from FCCBs or GDRs of Indian companies</td>
</tr>
<tr>
<td>196D</td>
<td>Income from FIIs now FPI except Capital Gains</td>
</tr>
</tbody>
</table>
Section 195

Character of payment
# Character of payment

## Determining the nature of payment

<table>
<thead>
<tr>
<th>Nature of Income (payee perspective)</th>
<th>Basis of tax</th>
<th>Income chargeable under</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Business / Profession income</strong></td>
<td>Taxable if Business Connection in India or property or asset or source of income in India or transfer of a capital asset situate in India</td>
<td>Section 9(1)(i)</td>
</tr>
<tr>
<td><strong>Capital Gain</strong></td>
<td>Taxable if situs of shares/ property is in India</td>
<td>Section 9(1)(i)</td>
</tr>
<tr>
<td><strong>Dividends</strong></td>
<td>Taxable if paid by an Indian company</td>
<td>Section 9(1)(iv) (subject to DDT)</td>
</tr>
<tr>
<td><strong>Interest</strong></td>
<td></td>
<td>Section 9(1)(v)</td>
</tr>
<tr>
<td><strong>Royalties</strong></td>
<td>Taxable if sourced in India</td>
<td>Section 9(1)(vi)</td>
</tr>
<tr>
<td><strong>Fees for Technical Services (FTS)</strong></td>
<td></td>
<td>Section 9(1)(vii)</td>
</tr>
<tr>
<td><strong>Salaries</strong></td>
<td>Taxable if services are rendered in India</td>
<td>Section 9(1)(ii)</td>
</tr>
</tbody>
</table>

Provisions of the IT Act or Tax Treaty, to the extent more beneficial to the taxpayer to apply
Section 195

Quantifying WHT
Quantifying WHT (1/3)

Rates in force

- Rates in force as defined under Section 2(37A) of the IT Act
- Rates of income-tax specified in IT Act / Tax Treaty under Section 2(37A)(iii), beneficial rates to apply
- The exchange rate is applicable as per Rule 26 – SBI TT buying rate
- Rates prescribed by tax treaty is generally inclusive of surcharge and education cess
- Tax to be withheld under Section 195 is on gross basis

If PAN not furnished under IT Act, then?

- Section 206AA, is a non-obstante provision that overrides the IT Act effective 1-4-2010
- Attracted when the payee does not have a PAN or discloses incorrect PAN to the payer
- Section 206AA provides for WHT at the higher of the following rates, namely:
  - Specified rate in the relevant provisions of the IT Act; or
  - Rate / rates in force; or
  - 20%
Quantifying WHT (2/3)

Section 195A – Income payable “net of tax” (Grossing-up)

- In the event of tax chargeable on any income is borne by the payer
- For the purposes of WHT under Section 195, income should be increased to such amount as would, after WHT thereon at the rates in force, be equal to the net amount payable to the payee
- Section 195A does not apply on notional income under Section 44BB
- Friction between Section 206AA and 195A – Section 206AA applicable or not for grossing-up under Section 195A of IT Act?
- Tax credit claimed by the payee to be restricted commercially – Compliance under Section 203?

Illustration of Section 195A

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount in INR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount payable to nonresident</td>
<td>100</td>
</tr>
<tr>
<td>Add: WHT (assumed to be 10% as per the tax treaty) grossed-up (10*100/90)</td>
<td>11.11</td>
</tr>
<tr>
<td>Total income</td>
<td>111.11</td>
</tr>
<tr>
<td>Less: WHT applicable at 10%</td>
<td>11.11</td>
</tr>
<tr>
<td>Net amount payable to the nonresident (Recipient)</td>
<td>100</td>
</tr>
</tbody>
</table>
Quantifying WHT (3/3)

Development on Section 206AA

- Overriding provision specifically dealt in Tribunal rulings where PAN was not obtained by nonresident
- Considering the matter will be settled at the Tribunal level, initial demand may be raised
- The ruling requires a careful analysis on the following premises being unaddressed

Meshing issue of section 2(37A), 200A read with section 206AA

- WHT rate is not final payment and not an obligation to pay tax
- No specific discussion or reference on these particular aspects

Rulings

- Ruling of Bosch Ltd was not considered and distinguished
- The context of Eli Lily ruling on taxability is not referred
- Applicability of Eli Lily was restricted to Section 192(1) salary
Section 195

Alternate remedy for payer
## Alternate remedy for payer

### Application by payer to the AO under Section 195(2)

<table>
<thead>
<tr>
<th>Application by whom?</th>
<th>The application to be made by the payer before the jurisdictional tax authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>When to apply?</td>
<td>When the payer is in doubt and believes that the whole of sum payable is not chargeable to tax in India</td>
</tr>
<tr>
<td>Process</td>
<td>The payer may approach the tax authority to determine the portion of income chargeable to tax in India</td>
</tr>
</tbody>
</table>
| Consequence          | • AO may issue a certificate, determining the portion of income chargeable to tax  
                        • The permission is valid for the period specified  
                        • No specified time limit available to pass the order under Section 195(2) |

- Order under Section 195(2) is:  
  - appealable after payment of tax  
  - amenable to revision under Section 263  
- Decision under Section 195(2) is inconclusive in determination of income in case of foreign entity
Section 195

Alternate remedy for payee
Alternate remedy for payee

**Application by payee to the AO under Section 195(3),(4) and (5)**

- Payee to make application in the prescribed form (Form 15C or form 15D) for no WHT
- Prescribed conditions under Rule 29B:
  - carries on business / profession in India for 5 years and has prescribed value of assets in India;
  - been regularly assessed to Income-tax;
  - not defaulted in tax, interest, penalty, fine or any other sum payable; and
  - not been subjected to penalty under Section 271(1)
- AO may issue provisional Nil WHT certificate
- Certificate issued by the AO valid for the Financial Year mentioned therein or until cancelled
- Renewal after the expiry or within 3 months before expiry of the certificate
- Certificate issued by AO can be prospective only
- Application after the payment of tax not entertained - *Circular 774 dated 17 March 1999*

**Application by payee to the AO under Section 197(1)**

- Application to be made by the payee under Section 197(1) for lower / no WHT in prescribed form (Form 13)
- Prescribed conditions under Rule 28AA:
  - Tax payable on estimated or existing income;
  - Tax paid of last 3 previous years; and
  - Details of advance tax, TDS & TCS
- AO to issue certificate indicating rate / rates of tax whichever is higher of the following:
  - Average rate determined on the basis of advance tax; or
  - Average of average rates of tax paid in last 3 years
- AO to issue certificate for lower / Nil WHT
- Certificate issued by the AO valid for such period mentioned therein or until cancelled
- Application to be made before the payment / credit whichever is earlier
Alternate remedy for payer and payee

Chartered Accountants’ (CA) Certificate under Section 195(6)

- Payment to nonresident also permitted by obtaining CA certificate as prescribed under Circular 759, read with Circular 10/2002 dated 9/10/2002
- Rule introduced by CBDT Notification

Detailed procedures discussed in the ensuing slides of operational rules

Advance Ruling under Chapter XIX-B of IT Act

- Ruling by quasi-judicial authority on reference by payer / payee
- Binding ruling on applicant as well as tax authorities unless change in facts / law (diluted)
- Upfront determination of taxability of transactions undertaken by nonresidents
- Fast track mechanism, protracted litigation may be avoided with certainty in tax treatment
- Ruling is appealable before the High Court
Compliance default

Section 195
Compliance default

Section 195

If applicable and complied

NO

Taxpayer in default

Transfer Pricing Adjustment
- Non WHT disallowance
- Penalty proceedings

Disallowance of Expenses
- Disallowance of interest

Recovery of Tax and Interest
- Failure to Pay Tax
  - Failure to deduct tax

Penalty proceedings

Prosecution proceedings
- Standard operating procedure prescribed in cases of default

No Consequence
Operational rules (1/9)

Provisions for CA Certificate

- *Circular 10/2002* authorizes remittance of money through a CA Certificate
- CA Certificate required also for trade payments – *RBI Circular No. 32 dated 19 July 2007*
- Provision under Section 195(6) introduced by Finance Act, 2008 for CA certificate
- Rule 37BB introduced by CBDT vide *Notification 30/2009 dated 25/03/2009*:
  - Forms 15CA and 15CB to intimate payments to nonresidents and manner of disclosing amount:
    - Form 15CA, prescribes information to be furnished online by the payer; and
    - Form 15CB, prescribes format of CA Certificate to be obtained
- Taxpayer not absolved from penalty / prosecution if found that WHT was lower than required
- CA certificate merely acts as a guidance and is not a substitute adjudication by the AO
- Procedure for remittance was amended from 01 October 2013, with significant change in the procedure, being more technological robust and detailed
  - Specified list of 28 payments like outbound investments, gifts, etc. exempt from the procedures
- *Notification issued on 16 December 2015 to amend Rule 37BB for new forms and compliances*
Disclosure provision prescribed under Section 195(6) (effective 1-6-2015)

Furnish information pertaining to foreign payment in the prescribed form and manner

Prescribed form and manner is as per Rule 37BB and Form Nos. 15CA and 15CB

Applicable to any person responsible of making payment to non-resident under section 195(1) any sum, whether or not chargeable to tax

Penalty for non-furnishing or inaccurate filing of information – INR 100,000
Operational rules (3/9)

Rule 37BB amended effective 1 April 2016 with an aim to strike balance between burden of compliance and collection of information

- Individuals exempt to comply with Form 15CA and 15CB procedures if:
  - Payment or aggregate of such payment does not exceed INR 5 lacs; and
  - Remittance does not require RBI approval under LRS and Current Account Transactions
- Specified list of remittances expanded to 33 for non compliance of Rule and additions include:
  - Enhanced compliance of 15CA and 15CB information to be shared with Principal Director of Income-tax (Systems) including filing of quarterly information on remittance by the AD in Form 15CC
- Revised Form Nos. 15CA and 15CB divided in 4 parts:
  - Part A: Remittance does not exceed INR 5 lacs
  - Part B: Sum chargeable to tax and lower WHT certificate obtained under Section 197/195(2)/(195(3)
  - Part C: CA Certificate under Form 15CB if payments exceed INR 5 lacs and are chargeable to tax
  - Part D: Sum not chargeable to tax under the provisions of the Act
## Operational rules (4/9)

### Suggested method for CA Certificate

<table>
<thead>
<tr>
<th>Steps</th>
<th>Action plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment covered under Section 195</td>
<td>Payment from resident or from nonresident to nonresident</td>
</tr>
<tr>
<td>Verify factual documents</td>
<td>Invoice, Contracts, Legal Status, obtain declaration, PAN, etc.</td>
</tr>
<tr>
<td>Determine character</td>
<td>Classification of payment, Business, Royalty, FTS, etc.</td>
</tr>
<tr>
<td>Evaluate taxability</td>
<td></td>
</tr>
<tr>
<td>• Under IT Act</td>
<td>Income-tax rates, Grossing-up, Section 206AA, Case law update</td>
</tr>
<tr>
<td>• Under tax treaty</td>
<td>No PE, TP analysis, beneficial owner, entity characterization, Article, LOB clause, Obtain TRC, MFN, Protocol to the tax treaty, Technical explanation to the tax treaty, Model commentaries</td>
</tr>
<tr>
<td>Specific orders</td>
<td>Verify specific orders received from tax authorities, 195(2), etc.</td>
</tr>
<tr>
<td>Follow compliance</td>
<td>Complete the Form comply with WHT deadlines for deposit</td>
</tr>
</tbody>
</table>

### Tax Residency Certificate (TRC)

- TRC requirement for all nonresidents to claim tax treaty benefits
- Furnishing of TRC mandatory to avail tax treaty benefits:
  - Circular 789 dated 13 April 2000
  - Shome Committee report on GAAR recommends that Circular 789 of 2000 should be retained
- Prescribed additional information to be furnished along with TRC
- CBDT clarified that the additional information prescribed may not be required if it already forms part of the TRC

**Notification No. 57/2013 dated 1/08/2013 [F.No.142/16/2013-TPL] revised the Rule 21AB**
Prescribed Form 10F

The additional details required to be furnished in Form 10F under Rule 21AB:
1. Status (Individual, Company, Firm, etc.) of the taxpayer
2. PAN of the taxpayer, if allotted
3. Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others)
4. Taxpayer's tax identification number or a unique number, as the case may be
5. Period for which the residential status, as mentioned in the TRC, is applicable and
6. Address of the taxpayer during the period for which the certificate is applicable

CBDT clarified that declaration may not be required if TRC contains above particulars
Form 15CA

**Part B**

(To be filled up if the remittance is chargeable to tax and exceeds fifty thousand rupees and the aggregate of such remittances made during the financial year exceeds two lakh fifty thousand rupees)

<table>
<thead>
<tr>
<th>Section A</th>
<th>GENERAL INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of the remitter</td>
<td>PAN of remitter</td>
</tr>
<tr>
<td>Area Code</td>
<td>Principal Place of Business</td>
</tr>
<tr>
<td>Complete address, email and phone number of the remitter</td>
<td>Status</td>
</tr>
</tbody>
</table>

- In case of company - If domestic, write ‘1’ and if other than domestic, write ‘2’

<table>
<thead>
<tr>
<th>REMITTER</th>
<th>Name of recipient of remittance</th>
<th>PAN of recipient of remittance</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Status</th>
<th>Address</th>
<th>Country to which remittance is made</th>
</tr>
</thead>
</table>

**REMITTEE**

- Principal place of business
- Email address
- (ISD code) - Phone Number

**ACCOUNTANT**

- Name of the Accountant signing the certificate
- Name of the proprietorship/firm of the accountant
- Address
- Registration no. of the accountant
- Date of certificate (DD/MM/YYYY)
- Certificate No.
- (Tick) Yes No

**A.O. ORDER**

- Whether any order/certificate u/s 195(2) 195(3)/197 of Income-tax Act has been obtained from the Assessing Officer.
- Section under which order/certificate has been obtained
- Name and designation of the Assessing Officer who issued the order/certificate
- Date of order/certificate
- Order/certificate number

**Form 15CB**

(See rule 37BB)

Certificate of an accountant

I/We* have examined the agreement (wherever applicable) between Mr./Ms./Ms.* (Remitter) and Mr./Ms./Ms.* (Beneficiary) requiring the above remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source as per provisions of Chapter XVII-B.

We hereby certify the following :-

1. Name and address of the beneficiary of the remittance

2. Country to which remittance is made

3. Name of the bank

4. BSR Code of the bank branch (7 digit)

5. Proposed date of remittance

6. Nature of remittance as per agreement/document

7. In case the remittance is net of taxes, whether tax payable has been grossed up?

    (Tick) Yes No
### Operational rules (7/9)

#### Form 15CA

<table>
<thead>
<tr>
<th><strong>Section B</strong></th>
<th><strong>PARTICULARS OF REMITTANCE AND TDS (as per certificate of the accountant)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Country to which remittance is made</td>
</tr>
<tr>
<td>2.</td>
<td>Amount payable</td>
</tr>
<tr>
<td>3.</td>
<td>Name of the Bank</td>
</tr>
<tr>
<td>4.</td>
<td>BSR Code of the bank branch (7 digit)</td>
</tr>
<tr>
<td>5.</td>
<td>Proposed date of remittance</td>
</tr>
<tr>
<td>6.</td>
<td>Nature of remittance as per agreement/document</td>
</tr>
<tr>
<td>7.</td>
<td>In case the remittance is net of taxes, whether tax payable has been grossed up?</td>
</tr>
</tbody>
</table>

#### Form 15CB

<table>
<thead>
<tr>
<th><strong>Section C</strong></th>
<th><strong>PARTICULARS OF REMITTANCE AND TDS (as per certificate of the accountant)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>Taxability under the provisions of the Income-tax Act (without considering DTAA)</td>
</tr>
<tr>
<td>9.</td>
<td>If any relief is claimed under DTAA -</td>
</tr>
</tbody>
</table>

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**Operation Rules (7/9)**

**Form 15CA**

- **Section B**: Particulars of Remittance and TDS (as per certificate of the accountant)
  - Country to which remittance is made
  - Amount payable
  - Name of the Bank
  - BSR Code of the bank branch (7 digit)
  - Proposed date of remittance
  - Nature of remittance as per agreement/document
  - In case the remittance is net of taxes, whether tax payable has been grossed up?

**Form 15CB**

- **Section C**: Particulars of Remittance and TDS (as per certificate of the accountant)
  - Taxability under the provisions of the Income-tax Act (without considering DTAA)
  - If any relief is claimed under DTAA -
    - Whether tax residency certificate is obtained from the recipient of remittance

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**Form 15CA**

| **Operational Rules (7/9)**
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Form 15CA</strong></td>
</tr>
<tr>
<td><strong>Section B</strong></td>
</tr>
<tr>
<td><strong>PARTICULARS OF REMITTANCE</strong></td>
</tr>
<tr>
<td><strong>AND TDS (as per certificate of the accountant)</strong></td>
</tr>
<tr>
<td>1.</td>
</tr>
<tr>
<td>2.</td>
</tr>
<tr>
<td>3.</td>
</tr>
<tr>
<td>4.</td>
</tr>
<tr>
<td>5.</td>
</tr>
<tr>
<td>6.</td>
</tr>
<tr>
<td>7.</td>
</tr>
</tbody>
</table>

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**Form 15CB**

- **Section C**: Particulars of Remittance and TDS (as per certificate of the accountant)
  - Taxability under the provisions of the Income-tax Act (without considering DTAA)
  - If any relief is claimed under DTAA -
    - Whether tax residency certificate is obtained from the recipient of remittance
**Operational rules (8/9)**

**Form 15CA**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>The basis of arriving at the rate of deduction of tax.</td>
</tr>
<tr>
<td>(b)</td>
<td>Amount of long term capital gains</td>
</tr>
<tr>
<td>(c)</td>
<td>Amount of short term capital gains</td>
</tr>
<tr>
<td>(d)</td>
<td>Basis of arriving at taxable income</td>
</tr>
<tr>
<td>(e)</td>
<td>Please specify nature of remittance</td>
</tr>
<tr>
<td>(f)</td>
<td>Whether taxable in India as per DTAA</td>
</tr>
<tr>
<td>(g)</td>
<td>If yes, rate of TDS required to be deducted in terms of such article of the applicable DTAA</td>
</tr>
<tr>
<td>(d)</td>
<td>If not, please furnish brief reasons thereof specifying relevant article of DTAA</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TDS</th>
<th>Amount of tax deducted at source</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.</td>
<td>In foreign currency</td>
</tr>
<tr>
<td>11.</td>
<td>In Indian Rs.</td>
</tr>
</tbody>
</table>

**Form 15CB**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Amount of long term capital gains</td>
</tr>
<tr>
<td>(b)</td>
<td>Amount of short term capital gains</td>
</tr>
<tr>
<td>(c)</td>
<td>Basis of arriving at taxable income</td>
</tr>
<tr>
<td>(d)</td>
<td>Please specify nature of remittance</td>
</tr>
<tr>
<td>(e)</td>
<td>Whether taxable in India as per DTAA</td>
</tr>
<tr>
<td>(d)</td>
<td>If not, please furnish brief reasons thereof specifying relevant article of DTAA</td>
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</tbody>
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</tr>
</tbody>
</table>

**Verification**

1. I/we* in the capacity of (full name in block letters), son/daughter of ____________________________, solemnly declare that the information given above is true to the best of my/our knowledge and belief and no relevant information has been concealed.

2. I/we* certify that a certificate has been obtained from an accountant, particulars of which are given in this Form, certifying the amount, nature and correctness of deduction of tax at source. I/we* certify that certificate/order under sections 195(2)/195(3)/197 of the Income-tax Act, 1961, particulars of which are given in this Form.*

3. In case where it is found that the tax actually deductible on the amount of remittance has not been deducted or after deduction has not been paid or paid in full, I/we* undertake to pay the amount of tax not deducted or not paid, as the case may be, along with interest due. I/we* shall also be subject to the provisions of penalty for the said default as per the provisions of the Income-tax Act, 1961.

4. I/we* further undertake to submit the requisite documents for enabling the Income-tax Authorities to determine the nature and amount of income of the recipient of the above remittance as also documents required for determining my/our liability under the Income-tax Act, 1961 as a person responsible for deduction of tax at source.

5. I/we* further declare that I/we* am/are* furnishing this information in my/our capacity as and I/we* am/are* also competent to sign the return of income as per provisions of section 140 of the Income-tax Act, 1961 and verify it.
Remitter obtains CA certificate in Form 15CB and pays tax as determined

Electronically upload the remittance details in Form 15CA (using the Digital Signature)

Take print out of Form 15CA with system generated acknowledgement number

Submit in duplicate Form 15CA and Form 15CB along with Form A2 to the Authorized Dealer

RBI / Bank makes remittance to the Payee

Bank forwards copy of (Form 15CA) and CA Certificate (Form 15CB) to the tax authorities

Single upload of Form 15CA online on the income-tax website

Registered user to login and navigate to “e-File” under Prepare and Submit Online Form 15CA using Digital Signature

Select appropriate part, Part A / Part B

Fill the requisite details and submit

On submission transaction ID and acknowledgement is generated

To view status / print the submitted form go to “My Account” View Form 15CA
Applicable WHT rate for F Co in absence of PAN

- Section 206AA provides for WHT at the higher of the following rates, namely:
  - Specified rate in the relevant provisions of the IT Act; or
  - Rate / rates in force; or
  - 20%

- F Co has a valid TRC

- What should be the WHT rate for Section 195?
Case Study (Variation)

Applicable WHT rate for F Co in absence of PAN

- Implications when payment made to AE?
- If payment made to Cyprus?
Key takeaways

1. Ignorance of rules may lead to undesirable litigation and cost, thus impacting business focus

2. Alternate remedy of application before tax authority conservative, but time consuming

3. Enhanced onerous provisions to comply with issue of CA Certificate after 01 April 2016

4. Cumbersome compliance provisions for non-resident payers’

5. Stay updated or hire competent professionals for a comprehensive assessment

6. Have patience and trust in Indian tax judiciary, accurate interpretation will lead to success
Thank you!

Your feedback is valuable and will help me improvise my skill-sets

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